HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
HONOURABLE DR.JUSTICE G.YETHIRAJULU

WRIT APPEAL No. 889 of 2005

DATED: 5-04-2007

Between:

Mrs. Nirmala Kale and another

…Appellants

and

District Registrar, Hyderabad and
Registrar of Societies, Hyderabad and others

…Respondents.

W.A.No. 889 of 2005

JUDGMENT:(Per Hon'ble Sri Justice Goda Raghuram)

Heard Sri John Sushil Kale, Party-in-person (2nd petitioner), the learned Government Pleader for Cooperation for respondent Nos. 1 to 3 and 5, Sri D.V.Sitarama Murthy, the learned counsel for the respondents 4 and 10 to 15, Sri B.P.Raju, the learned counsel for respondent No.5 and Sri Bathula Raj Kiran, the learned counsel for respondents 7 to 9.

The writ petition, against the decision whereof this appeal is filed, seeks the following reliefs:

1) to declare bye-law No.3 relating to membership i.e., Article 3 of Articles of Association of the 4th respondent society, as illegal, null and void and inconsistent or contrary to the provisions of the Andhra Pradesh Society Registration Act, 2001 and consequently issue a writ more particularly one in the nature of Writ of Mandamus for directing the appropriate authority among the Commissioner and Inspector General of Registration and Stamps, the District Registrar and the Registrar of Societies to direct 4th respondent society to amend its bye-law No.3 (Article 3) relating to membership, so as to bring it inconformity with the Act, 2001 by incorporating the eligibility criteria and scrutinize the membership applications of the petitioners with reference to such criteria and to admit the petitioners as members or pass speaking orders in the event of rejection or alternatively to deregister the 4th respondent society.

2) By holding the action of the respondents 1 to 3 in not

exercising their jurisdiction vested in and directing the petitioners to approach other authorities under Section 23 of the Andhra Pradesh Societies Registration Act, 2001 which has no application in the present case and to set aside letter No. SOC/25779/2004 dated 03-04-2004 issued by respondent No.3 to both the petitioners separately as bad, illegal, irrational, misconceived, non-application of mind, unconstitutional, besides being violative of the said Act.

3) And/or direct the 5th respondent to invoke its powers under Section 31 of Andhra Pradesh Societies Registration Act, 2001 and to direct the 4th respondent society to bring its bye-laws more particularly bye-law No.3 relating to membership inconformity with the said Act, 2001.

The petitioners claim to be believers in Jesus. Though the writ petition pleads that the petitioners are Members of the indigenous churches connected with the 4th respondent-Society, the frame work of the writ petition and the oral arguments advanced at the hearing in this appeal disclaims the assertion of the petitioners to be members of the 4th respondent-Society. The 4th respondent has not admitted or recognized the petitioners as members of the 4th respondent-Society.

Aggrieved by the conduct of the 4th respondent, neither admitting them to the membership of the said society nor recognizing their membership of the said society, the petitioners filed Writ Petition No. 7639 of 2004 for the reliefs already adverted to. By the judgment dated 16-3-2005, a learned Single Judge of this Court dismissed the writ petition holding that the 4th respondent is not a State within the meaning of Article 12 of the Constitution and is therefore not amenable to the judicial review process under Article 226 of the Constitution; that under Article 19 (1)(c) a group of citizens have a right to form an Association and under Article 26(b) of the Constitution such Association is entitled to manage its own affairs in matters of religion. As a corollary of these constitutional values, no individual has a

fundamental or a legal right to force himself to the admission of any association or society and that admission into an association could be only in accordance with the bye-laws, Articles of Association or Regulations of such association or society prescribing the admission norms. As the petitioners failed to establish that they were already members of the 4th respondent-Society and have failed to show their entitlement to membership, relief was declined by this court.

The petitioners assail the validity of bye-law No.3 of the 4th respondent-Society as being inconsistent with the provisions of Section 5 of the Andhra Pradesh Cooperative Societies Registration Act, 2001 (for short 'the Act'). Bye-law No.3 of the impugned bye-laws enjoins that all the signatories of the Memorandum of Association of the Society, and such other brethern, who voluntarily join the society with the approval of the governing body of the society, are the members. According to the petitioners, the eligibility criteria (spelt out in Bye-law No.3) for membership into the 4th respondent-Society is vague. It is contended that the expression brethern is a term of ambiguous import incapable of certitude and must therefore be invalidated. It is also contended that consecration of an exclusive right/discretion in the governing body of the 4th respondent-Society to accord approval for admission into the membership of the 4th respondent-Society is an arbitrary power inconsistent with the provisions of Section 5 of the Act. These contentions do not commend acceptance by this Court.

Neither on the registration or deemed registration of a group of individuals as a Society under the provisions of the Act nor on the obligations arising under Section 5 of the Act is the general freedom of association guaranteed Article 19 (1) (c) of the Constitution impaired. The provisions of the Act only seek to regulate certain areas of conduct

of a Society governed by the provisions of the Act and to the extent mandated by the legislation.

Section 5 requires the bye-laws of a Society to contain provisions, *inter alia*, in respect of the members of the society including eligibility, admission, withdrawal and termination etc. On a true and fair construction of the provisions of Section 5 (iii) of the Act, it does not appear that the bye-laws of a Society must incorporate all particulars enumerated in sub-section (iii) in minute detail nor is it mandatory that the eligibility criteria for membership must be such as to enable unrestricted membership of the society. The impugned bye-law uses the expression brethern and indicates that apart from the signatories to the Memorandum of Association of the Society, "such other brethern", are also eligible, who voluntarily join the society with the approval of the governing body. Brethern may not be an expression of contemporaneous usage but it is also not an expression unknown to the English Lexicon. It is a familiar expression and connotes (in the absence of any qualifying term employed in the bye-laws), all persons. Bye-law No.3 also requires that one must not only be a brethern who is voluntarily desirous of membership of the society, but the governing body of the Society should approve accord of membership. The criterion of conferring on the governing body of the society a right to filter membership to the society is *per se* not arbitrary.

Since the 4th respondent-Society is not a State, it is not obligated to conform to the equality injunctions of Article 14 or 15 of the Constitution. There is no law which expressly or by any compelling implication ordains unrestricted access to the members of the 4th respondent-Society nor spells down any criteria for such admission. In the absence of any such compelling legislative framework, the 4th respondent-Society, on text and authority, has the discretion to regulate its membership and to determine or choose who may be its

members.

This Court discerns no infirmity in the provisions of bye-law No.3 nor are the provisions of bye-law No.3 *ultra vires* the provisions of Section 5 of the Act. Since the petitioner has failed to disclose a legitimate nexus to claim the relief sought in this writ petition, the petitioners do not have the *locus* to maintain this writ petition. Since the provisions of bye-law No.3 are not seem to be *ultra vires* Section 5 of the Act and since the petitioners have failed to establish any legal right to membership of the 4th respondent-Society, other challenges by the petitioners to the internal working of the 4th respondent-Society including to the contested fact of the 4th respondent-Society having been dissolved and its assets and liabilities having been transferred to the 10th respondent, are not matters on which a decision is warranted in the writ petition or in this appeal.

In the judgment under appeal, this Court while dealing with the contentions of the respective parties as to the fact of dissolution of the 4th respondent-Society on 23-3-2004 recorded the following opinion.

> *"Therefore, I am of the opinion that the society is also entitled to create a trust and dispose and settle the properties of the society in favour of a trust having similar objectives for the better and effective management of the affairs of the society to achieve its aims and objects"*

Section 25 of the Act mandates that upon the dissolution of any society, if there remain, after the satisfaction of all its debts and liabilities, any property, the same shall not be delivered to or distributed among the members of the said society or any of them, but shall be delivered to some other society, with a similar objective to be named by a special resolution, or in default thereof, by the Court. It is contended on behalf of the petitioners that the learned Single Judge had recorded an opinion which suggests that the 4th respondent-

Society is entitled to create a trust and dispose of and settle the properties of the society in favour of a trust having similar objectives, whereas Section 25 enjoins that on dissolution the entrustment of the residual property of the dissolved society, could only be in favour of another Society having similar objectives, meaning thereby, in favour of a Society registered or deemed to be registered under the provisions of the Act. It is strenuously contended on behalf of the petitioners that the 10th respondent is neither a Society registered or deemed to be registered under the provisions of the Act and therefore any entrustment or delivery of the assets of the 4th respondent-Society in favour of the 10th respondent would be inconsistent with the provisions of Section 25 of the Act.

As the learned Single Judge has held and rightly, that the writ petition is not maintainable, the petitioner has no *locus standi* to claim admission to the membership of the 4th respondent-Society. Therefore, the question whether the 4th respondent was dissolved in 2004 and has validly entrusted the available assets on the dissolution, to the 10th respondent Society does not call for a resolution in the writ petition. Therefore, the opinion recorded by the learned Single Judge (extracted above) is not necessary. This part of the learned Single Judge's judgment is therefore, expunged.

In a latter portion of the judgment under appeal, while dealing with a letter purportedly filed by the 6th respondent instructing his counsel to withdraw the same from the *lis*, this Court recorded the following:

> *"On account of the influence exercised by the first petitioner, he has signed the implead petition and also other petitions prepared by his counsel"*

On behalf of the petitioners, it is contended that there is no

material to justify the conclusion that the 6th respondent had entered into the *lis* on account of the influence exercised by the 1st petitioner whereupon he had signed the petition to implead himself into the writ petition. As the above observation is also not necessary to record the fact that the 6th respondent had filed a letter seeking to withdraw from the writ petition, this Court considers it appropriate that the aforementioned sentence also be expunged.

Subject to the above, there are no reasons to interfere with the reasons recorded nor the conclusions in the judgment under appeal. The writ appeal is dismissed. There shall be no order as to costs.

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GODA RAGHURAM, J

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Dr. G.YETHIRAJULU, J

5-04-2007
GRR